

Exam No. \_\_\_\_\_

Criminal Law Midterm Fall 2005 Instructions (Professor Temple)

You have ninety (90) minutes to complete this exam. As you know, there are three (3) essay questions. I strongly recommend that you spend thirty (30) minutes on each question. Each question is worth ten (10) points for a total of thirty (30) points.

Please write your answers in the blue book. You should use the front side of each page. Please don't write on both sides of a page. You can write on each line of the blue book. You must write your exam number on the blue book.

You may use your text book (Dressler) during the exam. You may refer to any marginal notes you have made in your text book\*. You may not have class notes or any outlines/study aids in the exam. These answers should be in essay form. You do not have to format your answers in a court type format. (i.e. don't write the caption etc.)

\* You may also bring in copies of RSA 630:1-a to RSA 630:3 as posted on TWEN.

Question #1 (10 points)

You are a judge in the Franklin Pierce Superior Court. John May has been convicted of Aggravated Felonious Sexual Assault for the sexual assault of his 12-year-old niece. The maximum sentence for this crime is twenty (20) years in the New Hampshire State Prison, five (5) years of probation and a Four Thousand (\$4,000.00) Dollar fine. Mr. May is appearing before you for sentencing on October 10, 2005. Julie May is John May's wife. She was convicted as an accomplice to Aggravated Felonious Sexual Assault because she assisted John in restraining the victim. Mrs. May was sentenced to a prison term of two to four (2-4) years on October 1, 2005.

The State is asking for an extended term of imprisonment under RSA 651:6 on the basis that Mr. May has two (2) prior Felonious Sexual Assault convictions in 1980 and 1985. Specifically, the State is asking for a sentence of thirty (30) years to life.

Mr. May is fifty-years old. He did not receive any prison time for his prior Felonious Sexual Assault convictions. All of his prior sentences involve probation, including sex offender counseling. Mr. May has been compliant with all of the terms of his sentences. Additionally, he has maintained employment in the construction industry for over thirty (30) years. He and Mrs. May have two (2) children who are presently attending college. Finally, during the last ten (10) years Mr. May has volunteered for a number of community-based organizations, including the Red Cross and the Salvation Army.

The victim is 12-years-old. She was staying with Mr. and Mrs. May at the time of the offense on a temporary basis because her parents were vacationing in Florida. She is engaged in counseling to address the effects of the sexual assault. In a victim impact statement she has asked you to put her uncle in treatment rather than prison. She has told you Mr. May is more like a father to her.

Over the course of the last year, you have sentenced multiple sex offenders for the crime of Aggravated Felonious Sexual Assault. Your sentences ranged from maximums of five (5) years to twenty (20) years. As the judge, you must evaluate and address the State's request for an extended term of imprisonment of thirty (30) years to life in this case. Further, please sentence Mr. May giving the reasons for your sentence.

Question #2 (10 points)

On July 1, 2005, Tiger Temple engaged in a physical altercation with his golf partner, Annika Musinsky at the Concord Country Club. In a statement to the Concord Police Temple asserted that the altercation occurred as a result of remarks Musinsky made about Temple's red plaid golf pants. Tiger stated that he never intended to hurt Musinsky. He told the police he was just fooling around with his golf partner when he placed her in a head lock, dragged her to the ground and made her scream, "Uncle!" After the incident, Musinsky walked into the clubhouse where she collapsed into a chair complaining of neck pain. Tiger called 9-1-1 and an ambulance arrived on the scene. Annika was transported to Concord Hospital on a soft stretcher without a neck brace.

An x-ray at Concord Hospital revealed a fractured neck vertebrae. Annika was rushed into surgery for a neck fusion. She came out of surgery with a paralyzed left arm.

You are the prosecutor in this case. Under RSA 631:1 First Degree Assault is defined as purposely causing serious bodily injury to another. First Degree Assault is a Class A Felony with a maximum prison sentence of fifteen (15) years. RSA 631:2 defines Second Degree Assault as knowingly causing serious bodily injury to another. Second Degree Assault is a Class B Felony with a maximum term of imprisonment of seven (7) years. Finally, Simple Assault is defined as recklessly causing bodily injury to another. Simple Assault is a Class A Misdemeanor with a maximum sentence of one (1) year.

You have been provided with medical opinions from two (2) orthopedic surgeons. One surgeon states that the initial force of the headlock caused the fracture to Annika's cervical vertebrae resulting in the paralysis. The other orthopedic surgeon is of the opinion that the lack of a neck brace during transport to the hospital contributed to the fracture of the vertebrae.

As the prosecutor, you must decide whether to charge Tiger with First Degree Assault, Second Degree Assault, Simple Assault or no crime at all. Please write a memorandum discussing your decision and the reasons for either bringing one of these charges or not pursuing a criminal prosecution.

Question #3 (10 points)

On January 1, 2005, Juan Perez met Leroy Johnson to discuss a plan to commit arson at an apartment building located at 10 Green Street in Epsom, New Hampshire. The building belonged to Juan's employer who fired him two (2) weeks before the meeting. Juan insisted that the building be empty at the time of the fire since three (3) families lived there. Juan and Leroy kept the building under surveillance for three (3) days prior to the arson to monitor the time that the tenants were out of the building.

Juan determined that all of the tenants were out of the building either at work or school at 12:00 p.m. on each weekday. On Monday, March 1, 2005, Juan and Leroy observed the tenants leave the building. Juan then entered the building carefully planning the arson through the use of a special accelerant designed to race through the building in a matter of minutes. Prior to setting the arson, Juan checked each room in the building to be sure no tenants were present. He did not observe any tenants or activity in the building. Unfortunately, two (2) children, ages thirteen (13) and fourteen (14), skipped school that day and were in the building in a remote, upstairs attic. Juan set the fire and the building burned to the ground. Both of the children perished in the fire.

You have been retained by Juan as his defense counsel in this case. The State has brought a First Degree Murder indictment against Juan alleging that he purposely caused the death of the two (2) children. Please evaluate the strength of this First Degree Murder indictment under RSA 630:1-a and discuss any and all other Homicide offenses under RSA 630 that a judge could instruct the jury on in this particular case.